Appendix A

SUPREME COURT OF THE STATE OF COLORADO

No. 21358

FOUR COUNTIES WATER
USERS ASSOCIATION,
Plaintiff in Error,

v.

JAN 23 1967

COLORADO RIVER WATER
CONSERVATION DISTRICT,
Defendant in Error

ERROR TO THE DISTRICT COURT
OF ROUTT COUNTY
HON. ADDISON M. GOODING, JUDGE

EN BANC

JUDGMENT REVERSED
WITH DIRECTIONS

Ireland, Stapleton, Pryor & Holmes
D. Monte Pasco
For Plaintiff in Error.

Frank Delaney
For Defendant in Error.

MR. JUSTICE DAY delivered the opinion of the Court.

This writ of error is directed to portions of conditional decrees for the appropriation of water entered by the district court of Routt County in a supplemental adjudication of water rights in Water District 58.

The court granted to defendant in error, Colorado River Water Conservation District (hereinafter referred to as the District) a conditional decree for what is described as the Toponas Project with the priority date in 1951 and an additional conditional decree for what was denominated as the Wessels Project, with a priority date in 1954.

There is no dispute that the district is entitled to have awarded to it the conditional decrees. Only the priority dates are challenged.

Plaintiff in error Four Counties Water Users Association (hereinafter referred to as Four Counties) objected and excepted to the priority dates awarded to the district for the reasons:

> 1. That if an appropriation of water has been initiated as of the dates claimed and awarded, the due diligence required by law from those dates up to September, 1961, had not been shown, and
>
> 2. That what was done as of the dates claimed was not intended to and did not constitute an appropriation.

The question whether due diligence was shown since the priority dates granted in the district's decrees, and the further problem whether the Bureau of Reclamation of the United States is a predecessor in title and claim of the District need not be answered in view of our resolution of the question whether there was an actual intent to appropriate as of the dates in dispute.

We find from the facts hereinafter set forth and from the law applicable thereto, there was not an appropriation by either the District or the Bureau of Reclamation as of the priority dates granted to the District.

A summary of what was done initially on both projects upon which the claims for the decrees are founded follows:

THE WESSELS PROJECT

In the record made in support of the decree for the Wessels Project it was described as one to divert water of the Yampa River for the purpose of irrigating lands along the river above Steamboat Springs. The project includes construction of a small reservoir on the Yampa River and a canal from the reservoir. In July of 1954, the Bureau of Reclamation instituted a reconnaissance investigation of the Yampa White Basin, particularly that component which

was denominated the Wessels Project. This investigation consisted, among other things, of a land classification survey to determine whether the lands which would be irrigated by the project were suitable therefor and would be benefited thereby. This reconnaissance investigation resulted in the publishing in 1957 of a Yampa White Project Reconnaissance Report issued by Region 4-B of the Bureau. As to the nature of this report and of the reconnaissance conducted three years earlier, one Mr. Jennings, Project Manager of the Bureau of Reclamation, at Grand Junction, offered uncontroverted testimony which leaves little doubt as to what was intended by the work of 1954. He testified:

> "Generally speaking, the preliminary or reconnaissance investigations are a prelude to going into this very costly feasibility type of investigation. We use those [referring to the reports of the Yampa White reconnaissance report] as a guide to indicate where there is a feasible project and if in our judgment there isn't a project in here you wouldn't schedule it for detailed investigations."

In further referring to the 1957 Yampa White Project Reconnaissance Report, Jennings testified that such report would go through channels to the Department of the Interior and Bureau of Reclamation and "would probably go to Congress *for information* purposes; *it wasn't a feasibility report* or a report *on which project authorization is made* * * * it would go *more for their information.*" (Emphasis supplied.)

Thereafter were the following questions and answers:

> "Q. And Congress would then specifically authorize the investigation after the detailed feasibility report and appropriate money for it?
>
> "A. No. The *first step* would be to appropriate monies for a *detailed* investigation.
>
> "Q. But would they have to appropriate that to the Wessels Project?
>
> "A. That is right.

"Q. To investigate it?

"A. That is right.

"Q. They have not done that to date?

"A. *They have not done that.*" (Emphasis supplied.)

After the publication of the 1957 report, the Bureau according to Mr. Jennings, *did not undertake "any specific work" in connection with the project.* The first work which would show an *intent to take* water was described by witness Philip Smith, Secretary-Engineer for the Colorado River Water Conservation District. He testified that the District "studied a revised plan on the Wessels Project with a larger reservoir at the Pleasant Valley Reservoir site, but in order to conform with the plan as more or less adopted and that the Bureau was standing by on the Wessels Project, our final filing on the project was for the Bear Reservoir. The canal system there was no change in it."

On January 23, 1962 the District filed a map and statement with the State Engineer pursuant to law. The map and statement were based upon surveys made by the District in September of 1961. There is no dispute that these surveys were such as to constitute the initiation of an appropriation, and there is further no dispute that due diligence was shown from the time of those surveys up to the date the District presented its claim in July 1962. *Four Counties Water Users Association v. Colorado River Water Conservation District,* __Colo.__, 414 P.2d 469.

THE TOPONAS PROJECT

The evidence with respect to the Toponas Project is similar. The land classification survey undertaken by the Bureau of Reclamation was commenced in August, 1951. Regarding the nature of the work that was done on the Toponas Project by the Bureau is the following testimony:

> "The initial work done in this area was done under what we call a *basin type investigation.* The purpose of that investigation was to determine *potential and feasible projects within the basin* area;

> also, to make what we call an *inventory survey* of that area, including water potential, land potential, and various other factors." (Emphasis supplied)

The Toponas Project was reported on in February, 1954, by incorporation in the "Cliff Divide Project" [Toponas unit]. It was similar to the report in which the Wessels Project was discussed. A pertinent statement in the report is the following:

> "The extent to which the planned transmountain diversion from the Yampa River Basin would conflict with the potential developments in that basin has not been determined. *This should be given further consideration* in connection with investigations of the Yampa River Basin before detailed studies of the Toponas unit are undertaken." (Emphasis supplied.)

It is undisputed that on February 26, 1963 the District commenced surveys on the project which resulted in the filing of maps and statement of claims with the State Engineer on October 4th of the same year. These surveys were the same kind and embodied the same features as the Toponas Project contemplated by the Bureau report with the exception of a change of the alignment of the Toponas canal.

It is an inexorable rule of Colorado water law that, in order to establish a right to relate back to a point of time from which the priority is to commence, there must have been on the date claimed some act *evidencing an intent to take water* and to apply it to a beneficial use. As we stated in *Rocky Mountain Power Co. v. White River Electric Assn.*, 151 Colo. 45, 376 P.2d 158:

> "* * * although an appropriation is not complete until actual diversion and use, still, the right may relate back to the time when the first open step was taken giving notice of intent to secure it."

This court has defined "an appropriation" as "the *intent to take* accompanied by some open physical demonstration of the intent and for some valuable use." (Emphasis supplied.) See *Fort Morgan Land & Canal Co. v. South Platte Ditch Co.*,

18 Colo. 1, 30 Pac. 1032; *Larimer Co. R. Co. v. People, ex rel. Luthe*, 8 Colo. 614; *McDonald v. Bear River Co.*, 13 Cal. 220.

We find from the description of the work done by the Bureau of Reclamation in the reports previously alluded to that there was no intent to take water and no physical demonstration from which such intent could be inferred so as to constitute the initial step in an appropriation.

In *Four Counties Water Users Association v. Colorado River Water Conservation District, supra*, we made the following apt statement:

> "* * * We have held that what constitutes the 'first step' is not the same in every proposed diversion because the facts must be taken into consideration in each case on an *ad hoc* basis; * * *."

Taking the facts in the case at bar, it is apparent that the Bureau made only a preliminary study "for information" undertaken along with many similar studies over virtually every water shed on the Western Slope. There was not at that time any determination as to which of the many projects would be undertaken. Many never go beyond "the feasibility study." In the Toponas and Wessels Projects almost a decade passed from the first "reconnaissance investigation of the whole basin" before the first step showing intent to appropriate was instituted.

Not every kind of survey reflects an intention to take water. As we stated in *Fruitland v. Kruemling*, 62 Colo. 160, 162 Pac. 161:

> "The grantors of the plaintiff in error did not even entertain an intent which would satisfy the law when on the 21st day of May, 1900, they visited the premises and then and there determined to initiate and ultimately perfect rights by virtue of their irrigation project. The right, as well as the intent necessary to acquire it, has its foundation in practical considerations. There is little doubt that if, upon completion of the preliminary

survey and reconnaissance, the project proved utterly impracticable and unwarranted as a business venture, the present dispute would never have arisen. Therefore, the most that can be fairly assumed is that they determined on that date to construct a reservoir and ditches, if it should prove practical and feasible to do so. This fact could only be ascertained by examining the topography of the surrounding country and verifying such observations by actual survey, and undoubtedly until this had been done, there was not, and in the very nature of things could not have been *any definite and fixed intention to proceed further.* The law does not permit an intending appropriator to invoke the benefit of remote contingencies to unduly extend the doctrine of relation." (Emphasis supplied.)

As has been stated, there is no dispute that the District surveys, followed by the filing of the maps and statements, demonstrate concretely an intention to take water and to go forward with the projects described. The dates on which such steps were taken were also not in dispute.

Accordingly, the judgment is reversed with directions to the court to modify the District's conditional decrees as of the dates such surveys were taken – in September 1961 on the Wessels Project, and in February 1963 on the Toponas Project.

MR. JUSTICE HODGES and MR. JUSTICE KELLEY not participating.

JUDGMENT IN CASE No. 21358

This cause having been brought to this court by writ of error to review the judgment of the District Court of Routt County, and having been heretofore argued by counsel and submitted to the consideration and judgment of the court upon the matters assigned as constituting error in the proceedings and judgment of said District Court, and it now

appearing to the court that there is manifest error in the proceedings and judgment of said District Court,

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, reversed, annulled and altogether held for naught; and that this cause be remanded to said District Court with directions to modify the District's conditional decrees as of the dates such surveys were taken—in September 1961 on the Wessels Project, and in February 1963 on the Toponas Project.

It is further ordered that said plaintiff in error do have and recover of and from said defendant in error its costs in this court expended, to be taxed.

Appendix B

SUPREME COURT OF THE STATE OF COLORADO

No. 21566

FOUR COUNTIES WATER
USERS ASSOCIATION,
Plaintiff in Error

v.

JAN 23 1967

MIDDLE PARK WATER
CONSERVANCY DISTRICT,
COLORADO RIVER WATER
CONSERVATION DISTRICT
and LYNN A. MATHESON,
Defendants in Error

ERROR TO THE DISTRICT COURT
OF GRAND COUNTY
HON. ADDISON M. GOODING, JUDGE

EN BANC

JUDGMENTS REVERSED
AND CAUSE REMANDED

Ireland, Stapleton, Pryor & Holmes
D. Monte Pascoe
For Plaintiff in Error.

Delaney and Balcomb
For Defendants in Error Middle Park Water Conservancy District and Colorado River Water Conservation District.

J. Fred Schneider
For Defendant in Error Lynn A. Matheson.

MR. JUSTICE DAY delivered the opinion of the Court.

This writ of error is from a supplemental adjudication of water rights held by the district court of Grand County for Water District 50. Involved are conditional decrees awarded

to claimants Middle Park Water Conservancy District in cooperation with the Colorado River Water Conservation District, defendants in error. They will be referred to as Middle Park, and the District, respectively.

The challenge to the decrees relates to priority dates claimed and allowed in connection with what has been denominated as the Rabbit Ears and Troublesome Projects. The protest and objection to the Rabbit Ears decree is asserted by plaintiff in error, Four Counties Water Users Association, hereinafter referred to as Four Counties.

The controversy concerning the decree granted Middle Park and the District for the Troublesome Project affects the prior adjudicated rights of the defendant in error, Lynn A. Matheson, to whom we will refer by name. The decrees will be discussed as follows:

THE RABBIT EARS PROJECT

Middle Park made a statement of claim for water in connection with the Rabbit Ears Project and requested a priority date of August 18, 1959 based on a survey which it had undertaken as of that date with the cooperation of the District. This work resulted in the filing of a map and statement of claims for the project with the state engineer a few months thereafter. Claim was filed and an adjudication therein held November 2, 1959 resulting in a conditional decree for the project being granted as prayed for with the priority date of August 18, 1959. There is no objection to this original adjudication. Middle Park later filed an amendment to its statement of claim for this project and claimed a different and earlier date for its priority based upon reconnaissance investigation undertaken on the Rabbit Ears Project by the Bureau of Reclamation of the United States starting on September 15, 1950.

At the supplemental hearing on this amended statement, Four Counties appeared and objected and excepted to it, asserting that it would be adversely affected because of claim-

ing a priority of June 2, 1958 for the same waters as claimed by Middle Park.

After hearing held June 13, 1962 Middle Park's amended claim was allowed by the court and a new decree was awarded to it relating back to the 1950 date.

The evidence in this case relating to the initial work on the Rabbit Ears Project by the Bureau is almost identical to that shown to have been undertaken in the Wessels and Toponas Projects discussed in Supreme Court case No. 21358, announced this date. Studies made by the Bureau in 1950 were of the same nature and for the same purpose as those undertaken in the other projects and, in fact, the report on the Rabbit Ears Project was also made a part of the 1954 Cliff's Divide report discussed in case No. 21358. The nature of the Bureau's work is more fully set out in No. 21358 and is not repeated in this opinion. That case should be read in conjunction with this one.

There are other factors, however, which are asserted as making out a stronger case for relation back to the initial Bureau reconnaissance respecting the Rabbit Ears Project. These are that this particular project was specifically identified in the Upper Colorado River Storage Project Act, 43 USC § 620a, passed by the United States Congress in 1956. That legislation directed the Secretary of the Interior to give priority to the planning of the Rabbit Ears Project and to a report of such planning as well. Testimony was presented that as a result of the identification of the Rabbit Ears Project in such legislation, the Colorado Water Conservation Board had scheduled 1964 or 1965 as the time when such planning would actually begin. As has been stated, Middle Park and the District joined together in 1959 in the making of surveys of the project which resulted in the filing of maps and a statement of claim for water with the state engineer.

The only difference in the factual situation between this case and No. 21358 is that the Rabbit Ears Project was specifically named for planning in the 1956 act. The ques-

tion is whether the inclusion of the Rabbit Ears Project among those having special preference for planning evidenced an intent to appropriate different from what was shown in No. 21358. We conclude that although the interest of the United States in the development of the project might be argued to have become more definite, it still lacked the fixed purpose and intent to effect a diversion of water that would be required to initiate an actual appropriation under Colorado water law. (See discussion in case No. 21358.)

This conclusion is compelled by the testimony in the record as to the nature of the planning report to which the act directed the secretary to give priority. It follows:

> "Q. All right. I will reframe the question. Explain to the Court the nature of planning reports and what its purpose is. The planning reports, I mean, mentioned in Public Law 485.
>
> "A. Planning reports are *very little different* than the report I mentioned here (referring to surveys that had been done on the projects) except that it is done in greater detail. For instance, in a planning report it is required that land classification be performed in the field on a map drawn to scale, one inch to four hundred feet, whereas maps used in this study here are on a scale of one inch to one thousand feet. All of the studies are carried out in greater detail and to such refinement that the Bureau of Reclamation is willing to go to the Congress and recommend authorization, that they found the projects to be fully feasible and justified and that they recommend this construction.
>
> "Q. Then in the ordinary course of Reclamation procedure then is the completion of the planning report necessary before the project can be authorized?
>
> "A. It is necessary, absolutely necessary." (Emphasis supplied.)

It is clear from the above that the United States at no time had made a determination to pursue the Rabbit Ears Project with a definite intent to actually go ahead with the same and thereby appropriate the waters of this state. The first such intention manifested by anyone was that of Middle Park and the District when they commenced, on August 18, 1959, the surveys which led to the filings with the state engineer. As of the first claim and the adjudication obtained, both were of the view that that was the proper date upon which the appropriation had been initiated. The idea to claim the earlier date was an afterthought based on an erroneous premise. For the court to have awarded a priority date earlier than August 18, 1959 on the Rabbits Ears Project was erroneous.

THE TROUBLESOME PROJECT

We now turn to a discussion of the controversy in the instant case involving the Troublesome Project and the defendant in error, Lynn A. Matheson. The evidence regarding the Troublesome Project is similar to that in the Rabbit Ears Project. An August 5, 1959 priority date was originally requested by the claimants based on the commencement of survey work it had done preparatory to the filings with the state engineer. Later an amendment of the statement of claim was made and an amended decree was sought with a September 15, 1950 priority date based on the same kind of work as was done about the same time on the Rabbit Ears Project. Like the Rabbit Ears Project, the Troublesome was named for priority in connection with the completion of planning reports in the 1956 Congressional legislation, 43 USC § 620a. The statement of claimants in their answer brief pretty well sums up the evidence in the record on the Troublesome Project:

> "The history and development of the Troublesome Project is almost identical to the Rabbit Ears Project."

Our determination that this project fall squarely within the reasoning and the holding in case No. 21358 would dis-

pose of the matter except for the fact that Middle Park and the District claim right to the earlier 1950 priority date by default. Apparently no objections or exceptions were filed below to Middle Park's amended claim on the Troublesome. Matheson, who was adversely affected by Middle Park's claim thereon as amended, did not protest because of a lack of notice. There is nothing in the record to show to whom or in what manner notice was given of the amended claim, but it appears from a transcript of the record that no notice was given. Counsel for Middle Park stated to the court at one stage of the hearing:

> "The court will note that in connection with the Troublesome Project, knowing there would be no formal protest, I have not filed an amended statement of claim but rather have filed amendments of statement of claim, amending certain paragraphs * * *."

This statement was borne out by the record which shows that paragraph No. 5 of the original statement of claim was stricken and a new paragraph added giving the date of September 15, 1950, and that paragraph No. 7 of the original claim was stricken and a new paragraph substituted. Counsel, it seems, did not treat the matter as a new claim for priority and did not commence anew, giving the requisite notices to those who would be adversely affected.

We find, however, that Matheson was before the court before the conditional decrees were made a final judgment of the court. Cognizant of the fact that Matheson's position was identical with Four Counties and that the amended claim of the Troublesome Project was identical with that in the Rabbit Ears Project, and that the arguments in connection therewith were also the same, it did not reopen the matter to hear Matheson's objection but rather permitted Matheson to join Four Counties in a motion for new trial. When the motion for new trial was denied and the conditional decrees made final by the court, it was fully cognizant of Matheson's prior claim and of the objections to the Troublesome Project.

In this court, although not here as a plaintiff in error, as he probably should have been, Matheson, nevertheless, is a party to these proceedings. He was designated a defendant in error by Four Counties, even though it now appears that he is not adversely affected by Four Counties' claim and is actually in the same position as Four Counties. Matheson, as defendant in error, filed cross-error in his answer brief as to the Troublesome Project, adopting all of Four Counties' arguments.

We find that there was no appropriation sufficient to satisfy the law by the Bureau of Reclamation in 1950 on the Troublesome Project and that the correct priority date on the Troublesome Project is as originally requested, to-wit: August 5, 1959.

The judgments are reversed and the cause remanded to the trial court with directions to modify the conditional decrees by striking the priority date of September 15, 1950 and substituting therefor the date of November 2, 1959 as to the Rabbit Ears Project, and August 5, 1959 as to the Troublesome Project.

MR. JUSTICE HODGES and MR. JUSTICE KELLEY not participating.

JUDGMENT IN CASE No. 21566

This cause having been brought to this court by writ of error to review the judgment of the District Court of Grand County, and having been heretofore argued by counsel and submitted to the consideration and judgment of the court upon the matters assigned as constituting error in the proceedings and judgment of said District Court, and it now appearing to the court that there is manifest error in the proceedings and judgment of said District Court,

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, reversed, annulled and altogether held for naught; and that this cause

be remanded to said District Court for further proceedings in harmony with the opinion of the court on file.

It is further ordered and adjudged that said plaintiff in error do have and recover of and from said defendants in error its costs in this court expended, to be taxed.

Appendix C

STATUTES

Section 1 of the Reclamation Act of 1902, 32 Stat. 388 as amended, 43 U.S.C. § 391,

> All moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June 30, 1901, including the surplus of fees and commissions in excess of allowances to officers designated by the Secretary of the Interior, and excepting the 5 per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and in the State of Texas, and for the payment of all other expenditures provided for in . . . [this Title].

Section 2 of the Boulder Canyon Project Adjustment Act of 1940, 54 Stat. 744 as amended, 43 U.S.C. § 618a, which provides, *inter alia*,

> All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available for:
>
> * * *
>
> (d) Transfer, subject to the provisions of section 618b of this title, from the Colorado River Dam Fund to a special fund in the Treasury, established and designated the "Colorado River Development

> Fund", of the sum of $500,000 for the year of operation ending May 31, 1938, and the like sum of $500,000 for each year of operation thereafter, until and including the year of operation ending May 31, 1987 . . . . Receipts of the Colorado River Development Fund for the years of operation ending in 1938, 1939, and 1940 . . . are authorized to be appropriated only for the continuation and extension, under the direction of the Secretary, of studies and investigations by the Bureau of Reclamation for the formulation of a comprehensive plan for the utilization of waters of the Colorado River System for irrigation, electrical power, and other purposes, in the States of the upper division and the States of the lower division, including studies of quantity and quality of water and all other relevant factors. The next such receipts up to and including the receipts for the year of operation ending in 1955 are authorized to be appropriated only for the investigation and construction of projects for such utilization in and equitably distributed among the four States of the upper division . . . .

Section 1 of the Colorado River Storage Project Act of 1956, 70 Stat. 105 as amended, 43 U.S.C. § 620, provides,

> In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing

purposes, the Secretary of the Interior is authorized

(1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Curecanti, Flaming Gorge, Navajo (dam and reservoir only) and Glen Canyon . . . .

(2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase), San Juan-Chama (initial stage), Emery County, Florida, Hammond, La Barge, Lyman, Navajo Indian, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Pine River Extension, Seedskadee, Savery-Pot Hook, Bostwick Park, Fruitland Mesa, Silt and Smith Fork: *Provided* further, That as a part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

Section 2 and 3 of the Colorado River Storage Project Act of 1956, 70 Stat. 105 as amended, 43 U.S.C. §§ 620a and 620b, which respectively provide, *inter alia,*

In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the Gooseberry, Parshall, Troublesome, Rabbit Ear, Eagle Divide, San Miguel, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Grand Mesa, Dallas Creek, Dolores, Fruit Growers Extension, Animas-La Plata, Yellow Jacket, and Sublette

participating projects.[1] Said reports shall be completed as expeditiously as funds are made available therefor and shall be submitted promptly to the affected States. . . and thereafter to the President and the Congress. . . . The preparation of detailed designs and specifications for the works proposed to be constructed in connection with projects shall be carried as far forward as the investigations thereof indicate is reasonable in the circumstances.

The Secretary, concurrently with the investigations directed by the preceding paragraph, shall also give priority to completion of a planning report on the Juniper project.

And,

It is not the intention of Congress, in authorizing only those projects designated in section 620 of this title, and in authorizing priority in planning only those additional projects designated in section 620a of this title, to limit, restrict, or otherwise interfere with such comprehensive development as will provide for the consumptive use of States of the Upper Colorado River Basin of waters, the use of which is apportioned to the Upper Colorado River Basin by the Colorado River Compact and to each State thereof by the Upper Colorado River Basin Compact, nor to preclude consideration and authorization by the

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[1] By the Act of June 13, 1962, § 18, 76 Stat. 96, 102, the San Juna-Chama and Navajo Projects were deleted from this section and added to Section 1 of the Colorado River Storage Project Act as named participating projects authorized for construction. By the Act of September 2, 1964, 78 Stat. 852, the Savery-Pot Hook, Bostwick Park, and Fruitland Mesa Projects were deleted from this section and added to Section 1 as participating projects authorized for construction.

Congress of additional projects under the allocations in the compacts as additional needs are indicated. . . .[2]

[2] By Section 1(b) of the Act of August 16, 1962, 76 Stat. 389, 43 U.S.C. § 616(b), authorizing construction of the Frying Pan-Arkansas Project, Congress invoked the provisions of this section by adding the Basalt Project to Section 2 of the Colorado River Storage Project Act for priority of planning.

Appendix D

RESOLUTION

WHEREAS the primary function of the Colorado River Water Conservation District is the conservation of the water of the Colorado River for storage, irrigation, mining and manufacturing purposes and the construction of reservoirs, ditches and works for the purpose of irrigation and reclamation of additional lands not yet irrigated, as well as to furnish a supplemental supply of water for lands now under irrigation in the area comprehended within the boundaries of the District, and

WHEREAS, the Colorado River Storage Project and Participating Projects Act, Public Law No. 485, approved by the President of the United States on April 11, 1956, makes possible the development of the economic resources of the area within the boundaries of said District, (a) by the construction of hold-over storage reservoirs on the lower reaches of the Colorado River and its tributaries, whereby the obligations of the State of Colorado to the Lower Basin States under the 1922 Compact may be fulfilled, and (b) by the construction of head water storage and distribution facilities, by means of which beneficial use of the water of the stream may be made in that area, and

WHEREAS, it is believed to be essential, as the first step in such conservation of said water, that priorities of right to the use of the water of said stream, for all beneficial purposes within the boundaries of said District, be firmly established, and that such priorities of right be so fixed and determined that they will have seniority over any claimed right to the use of any of said water for transmountain diversion, and

WHEREAS, in taking said first step it appears to be imperative that surveys be made and maps and statements be filed in the office of the State Engineer of Colorado, of all of

said head water storage and distribution projects and facilities, commonly termed "participating projects", and that such be done in strict compliance with the statutes of the State relating thereto, and as expeditiously as is possible, and

WHEREAS, the Eagle River and its tributaries, the Roaring Fork and its tributaries, and the Gunnison River and its tributaries are most vulnerable to such transmountain or transbasin diversions as will seriously deplete the amount of water available for beneficial uses within the area included in the boundaries of the Colorado River Water Conservation District, and it appears to be essential, therefore, that said streams and their tributaries should be given first priority in survey work and the preparation and filing of maps and statements, and

WHEREAS no legal entity exists, at the present time, in the areas which include any of said last named streams within their boundaries, (with the exception of the Uncompahgre Valley Water Users Association) having either the authority under the law or the financial ability to make such filings, by reason whereof it devolves upon the Colorado River Water Conservation District to do such surveying work and to make such filings.

WHEREFORE, BE AND IT HEREBY IS RESOLVED by the Board of Directors of the Colorado River Water Conservation District as follows:

First: That the Secretary-Engineer of said District be and he is hereby authorized, empowered, directed and instructed forthwith, and as promptly and rapidly as may be, to do such engineering and survey work as may be necessary to accomplish the above purposes, and to prepare and to file in the office of the State Engineer of the State of Colorado any and all necessary or advisable maps, plats or statements, for the purpose of establishing rights to the diversion, storage and distribution of water for all beneficial purposes, by means of such diversion, distribution and storage units, projects or facilities as he shall consider necessary to accom-

plish the above objectives, or as may be specified or directed by the Executive Committee or Board of Directors of said District; and in so doing said Secretary-Engineer, Executive Committee and Board of Directors shall give full consideration to the desires of local interests.

BE IT AND IT IS FURTHER HEREBY RESOLVED That, upon the formation, in any of the above described areas, of a water conservancy district or of any other organization which shall be authorized and qualified, under the laws of the State of Colorado, and of the United States of America, to negotiate and to enter into binding contracts with the United States of America, through its Secretary of the Interior, for the construction of any such projects in connection with which such filings are made, any and all such filings, and all rights and interests of the Colorado River Water Conservation District in said filings and in the water represented thereby, upon request by any such district or entity, shall be assigned, transferred and set over unto said district or other entity, without cost to such entitites, Provided, that no transfer shall be made of such filing except for beneficial use within the boundaries of the district.

CERTIFICATE

I, Philip P. Smith, Secretary of The Colorado River Water Conservation District, do hereby certify that the above and foregoing is a true and correct copy of a resolution passed by the said Board of Directors, on the 16th day of October, A.D., 1956.

/s/ Philip P. Smith
Secretary

(Seal)

ASSIGNMENT OF WATER RIGHTS

THIS ASSIGNMENT, made this 26th day of January, 1962, by the COLORADO RIVER WATER CONSERVATION DISTRICT, organized under and by virtue of the laws of the State of Colorado, Assignor, herein styled the District, to THE UNITED STATES OF AMERICA, Department of the Interior, Assignee, herein styled the United States,

WHEREAS, the United States of America is initiating construction of the Curecanti Unit, a unit of the Colorado River Storage Project, for the purpose, among others, of stabilizing the flows of the Colorado River in order to permit the Upper Basin States to more fully utilize their allocation of the river waters, as set forth in the Upper Colorado River Basin Compact.

WHEREAS, the District has obtained conditionally decreed water rights for said Unit for the purpose of assisting in the development of said Curecanti Unit, and of making provision for development, within the District, of the water resources of the Gunnison River and its tributaries in accordance with the responsibilities of the District, provided in Chapter 149, Article 8, Colo. Rev. Stats. 1953.

NOW, THEREFORE, The District, in consideration of the sum of One Dollar and for other good and valuable consideration, does hereby assign, set over and transfer unto the United States, all of the right, title, interest, claim and priority of the District in and to the following described decrees and conditional priorities and the waters represented thereby:

Decree in the Matter of the Adjudication of Priorities for Water Rights in Water District No. 62 in the State of Colorado, Civil Action 6981, recorded in Montrose County, Colorado, March 30, 1960, in Book 27, Page 293, to-wit:

DITCH OR PROJECT NO. 282

CONDITIONAL PRIORITY NO. 445
Crystal Reservoir Storage.
CONDITIONAL PRIORITY NO. 446
Crystal Power Plant Direct Flow.
CONDITIONAL PRIORITY No. 447
Blue Mesa Reservoir Storage.
CONDITIONAL PRIORITY No. 448
Blue Mesa Power Plant Direct Flow.
CONDITIONAL PRIORITY No. 449
Morrow Point Reservoir Storage.
CONDITIONAL PRIORITY No. 450
Morrow Point Power Plant Direct Flow.

Decree in the Matter of the Adjudication of Priorities for Water Rights in Water District No. 59 in the State of Colorado, Civil Action 5590, recorded in Gunnison County, Colorado, January 27, 1961, in Judgment Book No. C, Page 317, to-wit:

THE CURECANTI UNIT

CONDITIONAL PRIORITY NO. 565
Blue Mesa Reservoir Storage.
CONDITIONAL PRIORITY NO. 566
Blue Mesa Power Plant Direct Flow.
CONDITIONAL PRIORITY NO. 567
Morrow Point Reservoir Storage.
CONDITIONAL PRIORITY NO. 568
Morrow Point Power Plant Direct Flow.

This assignment is made by the District and accepted by the United States upon the condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River.

IN WITNESS WHEREOF, the District has caused this Assignment to be executed the day and year first above written.

THE COLORADO RIVER WATER CONSERVATION DISTRICT

By /s/ A. Allen Brown
President

ATTEST:

/s/ Philip P. Smith
Secretary

STATE OF COLORADO,)
COUNTY OF GARFIELD.) ss.

On the 26 day of January, 1962, personally appeared before me A. Allen Brown and Philip P. Smith, who being by me duly sworn did say that they are the duly appointed, qualified and acting President and Secretary, respectively, in and for the Colorado River Water Conservation District of the State of Colorado, and that the within and foregoing instrument was signed in behalf of said District by authority of a resolution of the Board of Directors of said Colorado River Water Conservation District, and the said District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

/s/ Edith B. Williams
Notary Public
Residing at Glenwood Spring, Colo.
State of Colorado

My Commission Expires:
Oct. 23, 1965.

EXPLANATION

- IRRIGATED LAND
- IRRIGABLE LAND
- RESERVOIR SITE
- MAIN CANAL LOCATION
- TUNNEL LOCATION
- POTENTIAL HYDROELECTRIC POWER PLANT
- EXISTING HYDROELECTRIC POWER PLANT
- EXISTING MAIN CANAL
- EXISTING DIVERSION TUNNEL
- BASIN DIVISION BOUNDARY.
- BOUNDARY—COLORADO RIVER BASIN
- EXISTING TRANS-MOUNTAIN DIVERSION CANAL

Scale statute miles

Modified polyconic projection
North American datum
1948

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

WATER RESOURCES DEVELOPMENT
COLORADO RIVER BASIN
COLORADO

Appendix F

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

IN REPLY REFER TO: 430

AUG 10 1967

The Colorado River Water Conservation District
P. O. Box 282
Glenwood Springs, Colorado 81601

Gentlemen:

Pursuant to your request, I am forwarding the following data on Reclamation projects with water rights that may be threatened by the opinions of the Supreme Court of Colorado in Four Counties Water Users Association v. Colorado River Water Conservation District, 425 P. 2d 259 and Four Counties Water Users Association v. Middle Park Water Conservation District, 425 P. 2d 262.

Reconnaissance reports have been completed on the following projects:

Project	Expended To Date 6/30/67	Estimated Total Cost
Rabbit Ear	$ 22,128	$ 4,846,600
Troublesome	19,407	5,387,700
Wessels	4,507	2,488,000
Toponas	25,768	7,779,000
Subtotal	71,810	20,501,300
Juniper (Includes the Great Northern Unit)	204,529	169,601,000
Burns	12,284	2,763,000
Hayden Mesa	16,967	11,671,000
Flattops	31,782	62,300,000
Parshall	48,919	12,026,000
Eagle Divide	16,326	3,498,200
Total	$ 330,807	$261,859,200

Feasibility reports either have been or are being prepared on the following projects:

Yellow Jacket	538,561	36,325,000
Grand Mesa	527,790	36,541,000
Battlement Mesa	389,563	16,972,500

Bluestone	356,357	6,818,000
Upper Gunnison	429,309	8,899,000
Basalt	88,758	17,545,000
Dallas Creek	686,214	37,687,000
West Divide	1,010,497	99,800,000
Dolores	891,955	46,643,000
San Miguel	1,007,022	67,815,000
Animas-La Plata	929,150	109,493,000
Total	$6,855,176	$484,538,500

The following projects have been authorized for construction. The first four projects listed have been constructed, Curecanti, Silt, and Bostwick Park are under construction and advance planning preparatory to construction is in progress on Fruitland Mesa and Savery-Pot Hook.

Project	Expenditure To 6/30/67	Total Estimated Cost
Collbran	$ 15,955,376	$ 15,955,376
Florida	11,096,866	11,144,287
Paonia	7,557,389	8,097,377
Smith Fork	4,455,130	4,622,728
Curecanti	68,024,736	97,950,000
Silt	7,089,041	7,657,120
Bostwick Park	1,190,027	5,650,000
Fruitland Mesa	347,140	28,204,000
Savery-Pot Hook	831,151	15,406,000
Total	$116,546,856	$194,686,888

Sincerely yours,

G. G. Stamm

Assistant Commissioner